

## Message Text

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ACTION ARA-06

INFO OCT-01 SS-14 ISO-00 L-01 EB-03 TRSE-00 CIEP-01 COME-00

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FM AMEMBASSY LIMA

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C O N F I D E N T I A L LIMA 9390

LIMDIS

FOR ARA - WILLIAM ROGERS; L - MARK FELDMAN; EB - THOMAS ENDERS,  
TREASURY - JOHN BUSHNELL; CIEP - WAYNE SHARPE; COMMERCE - DAN  
ARRILL

EO 11652: GDS

TAGS: EIND, EINV, EMIN, PFOR, PE

SUBJECT: MARCONA EXPROPRIATION: MEETING NOVEMBER 12 WITH MARCONA  
OFFICIALS

REF: LIMA 9351

1. SUMMARY: U.S. TEAM MET EARLY MORNING NOVEMBER 12 TO  
GIVE MARCONA OFFICIALS UPDATE ON PROGRESS MADE TO DATE  
WITH GOP AND SEEK THEIR ADVICE ON HOW TO PROCEED WITH  
FURTHER DISCUSSIONS ON ESCROW ACCOUNT AND RELATED ISSUES  
ASSOCIATED WITH RESUMING ORE SHIPMENTS. MARCONA EXPRESSED  
SATISFACTION WITH PROGRESS TO DATE AND WAS IN AGREEMENT  
WITH GENERAL POSITION THAT RESUMPTION OF ORE SHIPMENTS SHOULD  
BE INSTITURED PROVIDED THAT (A) A SIGNIFICANT PORTION OF  
TOTAL ORE SHIPMENTS ARE PLACED IN THE ESCROW ACCOUNT; (B)  
ALL ORE SHIPMENTS FROM PERU BE INCLUDED IN THE AGREEMENT;  
(C) AGREEMENT WOULD NOT CONTAIN LANGUAGE WHICH WOULD  
UNDERCUT MARCONA'S NEGOTIATIONS WITH THE JAPANESE ON  
SHIPPING CONTRACTS; AND (D) USG WOULD CONTINUE TO SEEK  
VIGROOUSLY TO REACH AGREEMENT WITH GOP ON TERMS OF A  
FINAL SETTLEMENT.

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2. AFTER SUMMARIZING THE RAPIDLY MOVING DEVELOPMENTS IN THE LAST 36 HOURS, STRESSING INTENSITY OF DISCUSSIONS AND TOUGH POSITION TAKEN BY U.S. SIDE, FISHLOW POINTED OUT THAT RESUMPTION OF ORE SALES AS AN INTERIM ARRANGEMENT WOULD GIVE BOTH MARCONA AND THE GOP MORE TIME TO REASSESS THEIR POSITIONS, AS WELL AS PROVIDE A MECHANISM FROM WHICH A FINAL AGREEMENT COULD EMERGE. THE GOP WOULD HAVE MORE TIME TO DECIDE HOW TO DEAL WITH THE COMPENSATION QUESTION IN A PUBLIC WAY, WHICH IS ABSOLUTELY ESSENTIAL FROM ITS POINT OF VIEW. ON THE OTHER HAND, MARCONA WOULD BE IN A BETTER POSITION TO DETERMINE POTENTIAL FINANCIAL GAINS FROM A RESUMPTION OF ORE SHIPMENTS FROM PERU TO JAPAN WHICH WOULD HAVE TO TAKE PLACE ON MARCONA'S VESSELS EITHER DIRECTLY OR INDIRECTLY. FISHLOW STATED THAT IT WOULD BE HELPFUL BECAUSE IT MAY ENABLE MARCONA TO SHOW MORE FLEXIBILITY ON FINAL BOTTOM-LINE FIGURE.

3. FISHLOW INFORMED MARCONA OFFICIALS OF THE \$29 MILLION NET FIGURE FOR COMPENSATION PRESENTED ELLIPTICALLY BY GOP COMMISSION AND DISTRIBUTED COPIES OF OUR DRAFT PAPER OUTLINING THE GENERAL MODALITIES FOR ORE SALE RESUMPTION, AS WELL AS THE GOP REDRAFT. FISHLOW EXPLAINED DIFFERENCES IN RESPECTIVE DRAFTS ALONG LINES OUTLINED REFTEL AND INVITED COMMENTS AND SUGGESTED CHANGES TO BE USED IN THE NEXT ROUND OF NEGOTIATIONS. FURTH BEGAN BY ENDORSING THE INITIATIVE AND WAS MOST CONCERNED ABOUT PERCENTAGE OF TOTAL SALES TO BE PLACED IN ESCROW ACCOUNT. THE GOP COMPROMISE OF 5.6 PERCENT, AS OPPOSED TO OUR 50 PERCENT, WAS COMPLETELY UNACCEPTABLE TO MARCONA. FURTH MADE IT CLEAR THAT THE PERCENTAGE WILL HAVE TO BE SUBSTANTIAL SINCE, IN EFFECT, MARCONA WAS BEING ASKED TO GIVE UP THEIR ORE CONTRACTS. FISHLOW SUGGESTED 33.6 PERCENT AND FURTH ACCEPTED AND RATIONALE WAS JOINTLY DEVELOPED ON HOW THE FIGURE WOULD BE PRESENTED TO GOP. IN ADDITION, REVISED U.S. DRAFT ALSO CONTAINED SENTENCE TO THE EFFECT THAT ESCROW ARRANGEMENT MAY REMAIN IN FORCE IF BOTH PARTIES AGREE IN ORDER TO GENERATE TOTAL COMPENSATION. LANGUAGE WAS ALSO MODIFIED TO PROTECT MARCONA'S POSITION WITH JAPANESE RECEIVERS TO FACILITATE NEW SHIPPING CONTRACTS FOR PERUVIAN ORE SALES.

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4. FINALLY, U.S. SIDE EXPLAINED GOP DESIRE THAT MARCONA RESOLVE SALES COMMISSION TAX ISSUES WHICH POTENTIALLY COULD REDUCE MARCONA'S COMPENSATION BY AT LEAST \$15 MILLION. FISHLOW EXPLAINED THAT GOP WANTED MARCONA TO DEFEND ITSELF BY EXPLAINING ITS POSITION AT THE FINANCE MINISTRY. U.S. TEAM INDICATED THAT IT HAD ARGUED THAT MARCONA CONTACTS SUPPORTED MARCONA POSITION. MARCONA MIGHT TAKE SAME POSITION WITH TAX

AUTHORITIES. TREATMENT MARCONA RECEIVED WOULD BE ONE INDICATION  
OF GOOD FAITH ON THE PART OF THE GOP. IN EFFECT, THIS MIGHT GIVE THE  
GOP A WAY OF WIPING THE CLAIM OFF THE BOOKS.  
DEAN

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